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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/128,721	08/04/1998	TODD ROBERT CARROLL		3309

23456 7590 06/04/2002

WADDEY & PATTERSON  
414 UNION STREET, SUITE 2020  
BANK OF AMERICA PLAZA  
NASHVILLE, TN 37219

EXAMINER

GUARRIELLO, JOHN J

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/04/2002

20

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/128721

Applicant(s)

Carroll

Examiner

John Guaricillo

Group Art Unit

1971

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 2/25/2002
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-31, 33-42 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-31, 33-42 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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### **DETAILED ACTION**

15. The Examiner acknowledges paper # 19 of 2/25/2002, the amendment .

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 112***

17. Claims 1-3, 6-19, 22-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, it is still not clear what the components of the specific coating composition comprises which meet the characteristics of puncture resistance and flex crack resistance as stated in the claim. Claims merely setting forth physical characteristics desired in an article, and not setting forth specific compositions which would meet such characteristics, are invalid as vague, indefinite, and functional, since they cover any conceivable combination of ingredients either presently existing, or which might be

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discovered in the future and which would impart the desired characteristics, see Ex parte SLOB (Bd Pat App&Int) 157 USPQ 172.

In claim 13, it is not clear for the same reasons given for claim 1.

In claim 30, it is not clear for the same reasons given for claim 1.

In claim 37, it is not clear for the same reasons given for claim 1.

Applicant's arguments regarding breadth and functionality have been considered but they are not persuasive, see the cite to Ex parte SLOB. Moreover, there is no structure or chemistry to meet the properties or characteristics which applicant desires.

***Claim Rejections - 35 USC § 102***

18. Claims 1-3, 6-19, 22-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Langley 5,948,708.

Rejection is maintained substantially as in paper # 17 of 11/20/2001.

Applicant's arguments regarding thermoplastic polyolefin have been considered but they are not persuasive because Langley describes polyethylene, low density polyethylene and polypropylene, column 4, lines 4-

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11 which are thermoplastic polyolefin, TPO. Furthermore, since there is no structure or chemistry in the claimed invention to meet the claimed properties applicant desires and which applicant argues, the arguments are not commensurate in scope to the claims of the claimed invention. Claims still lack novelty.

19. Claims 1-31, 33-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Hauer et al. 5,626,947.

Rejection is maintained substantially as in paper # 17 of 11/20/2001.

Applicant's arguments regarding the motivation have been considered but they are not persuasive because the present rejection is anticipation.

Applicant's arguments regarding thermoplastic resin have been considered but are not persuasive because Hauer describes thermoplastic resin, see abstract; column 4, line 4-49; column 5, lines 40-50; and column 6, lines 24-60.

Applicant's arguments regarding insufficient disclosure by Hauer is noted but the Examiner disagrees because applicant's claims are broader than Hauer describes and as note above in this paragraph Hauer describes specific

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thermoplastic polyolefins. Furthermore, applicant's arguments regarding TPO are noted but TPO is not TPOE, thermoplastic polyolefin elastomer.

Applicant's specification as filed does not refer to TPO as an elastomer.

Applicant's arguments are not commensurate in scope to the claims in the claimed invention. Applicant is arguing elastomer with TPO and the claims are directed to TPO. Claims lack novelty.

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

John J. Guarriello:gj

Patent Examiner

May 27, 2002



TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
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